(3)

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

W.P.NO. 868 / 2005 Single Bench

Petitioners :

1. Dhanwant Rao Thite
S/o Sadashiv Thite,
Aged about 65 years,
Vice President
Maratha Mitra Mandal
R/o Budhapara,
Raipur-(C.G.)

2. Marath Mitra Mandal
Budhapatra, Raipur
Through its Secretary
Budhapara, Raipur,
Dist : Raipur-(C.G.)

P.R. No. 866/05
Presented by Shri Rakesh Kotary
dated 01-03-05

Versus

Respondents :

1. Balasaheb Dani
S/o Ganpat Rao Dani
Aged about 60 years,
R/o Budhapara
Raipur-(C.G.)

2. Shri Chatrapati Shivaji Vidya Mandir
Late Baburao Dani,
Smriti Shikshan Samiti
Through its President, Budhapara,
Raipur-(C.G.)

3. Adhyaksha
Shri Chhatrapati Shivaji Vidya Mandir
Budhapara, Raipur-(C.G.)

पथ आयुक्त बिलासपुर तहसील क्षेत्र

WRIT PETITION UNDER ARTICLES 226 / 227 OF THE CONSTITUTION OF INDIA

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(571)

आदेश पत्रक

मामला क्रमांक WP 868/05 **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

15.3.2005

Shri Rakesh Anthony, counsel for the petitioners.

Shri P.S. Koshy, Deputy Advocate General for the State.

The petitioners, who are the defendants before the court below, have preferred this writ petition under Article 227 of the Constitution of India being aggrieved by order dated 8.12.1998 (Annexure P-1) passed by learned 7th Civil Judge Class-II, Raipur in Civil Suit No.245A/1995 whereby learned Civil Judge has allowed the application filed by the plaintiff/respondent No.1 herein for amendment in the plaint.

Brief facts leading to filing of this writ petition are that respondent No.1 herein filed a civil suit against the petitioners herein and two others for declaration and injunction to the effect that defendant No.2 to 4 are not entitled to open any educational institution in the building in question and they be restrained from doing any such act. Respondent No.1 herein filed the suit on the ground that building in question belongs to his father Late Shri Babu Rao Dani and thereafter, being the son of said Babu Rao Dani he is the owner and manager of that property. By the said amendment application respondent No.1 wanted to insert the amendment showing that since his father Late Babu Rao Dani became the owner of the property on account of Will executed in his favour on 28.11.1991 and after his death he has become the owner of the property. As such, by way of the amendment application respondent No.1 wanted to elaborate his contention which was already taken by him in Paragraph No.3 of the plaint.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... WP 868/05 ..... **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

As has been mentioned by learned Civil Judge that the amendment in question is not based on any separate cause of action, does not change the nature of suit and moreover, the application has been filed delayed, therefore, amendment can be allowed by compensating the petitioners herein and accordingly, imposed the cost of Rs.400/-.

Having heard learned counsel for the petitioners and having perused the impugned order, plaint and written statement, I am of the opinion that learned counsel for the petitioners has not been able to make out a case for interference by this Court by exercising extraordinary jurisdiction under Article 227 of the Constitution of India, as there is no illegality or infirmity in the impugned order. As mentioned by the trial court in the impugned order that by the proposed amendment respondent No.1 herein wants to elaborate the pleadings which is already on the record and learned counsel for the petitioners during the course of arguments said that so far the plaintiff's evidence has commenced. Therefore, I am of the opinion that the writ petition of the petitioners is devoid of any merit, same is liable to be dismissed and accordingly, it is dismissed at the admission stage itself.

Consequently, M.(W.)P. No. 703/2005 & I.A. No.1722/05 also stand dismissed.

Sd/-
L.C. Bhadoo
Judge

Roshan/-

(पीछे देखिये)